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SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 6300
SEATTLE, WA 98104-7092

EXAMINER

AVELLINO, JOSEPH E

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/872,332

Applicant(s)

BERG, MITCHELL T.

Examiner

Joseph E. Avellino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-10 and 16-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-10 and 16-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10/5/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/3/01, 9/2/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 6-10, and 16-28 are presented for examination. The Office acknowledges the election of Group II and the cancellation of Group I claims 1-5 and 11-15. The Office acknowledges the addition of claims 21-28.

Information Disclosure Statement

2. The information disclosure statements (IDS) submitted on October 3, 2001 and September 2, 2005 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements have been considered by the examiner.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 21-27, rejected under 35 U.S.C. 101 because they are directed towards non-statutory subject matter.

4. Claim 21 recites storing contents on a signal-bearing medium. It is not clear as to what the "contents" are or what the "signal-bearing medium" specifically is. As such it cannot be considered pertaining to any of the technological arts since this can be attributed to computer code on a written piece of paper. Claims 22-25 depend upon claim 21 and are rejected as being dependent upon a rejected base claim.

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5. Claim 27 is not limited to tangible embodiments since it recites the signal-bearing medium as a data transmission medium, which is non-statutory subject matter. See MPEP 2106 regarding computer executable inventions.

6. Applicant is requested to incorporate claims 26 and 28 into claim 21 and cancel claim 27 to overcome this rejection.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6, 16, 21, and 26-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Bestavros et al. (USPN 6,370,584) (hereinafter '584).

8. Referring to claim 6, '584 discloses an information processing system, comprising:

a first computing device (i.e. server) configured to:

receive a request packet originating from a client, the request packet including an identifier (i.e. an inherent feature of any TCP packet) (col. 3, lines 15-20);

in response to the request packet, identifying a computing device that is associated with the identifier (col. 3, lines 22-35);

when the identified computing device is the first computing device, performing an operation of an application in response to the request packet (col. 3, lines 13-35).

when the identified computing device is a second computing device, outputting the request packet to the second computing device for performing the operation in response to the request packet (col. 3, lines 15-20).

9. Claims 16, 21, and 26-28 are rejected for similar reasons as stated above.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-10, 17-20, and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over '584.

11. Referring to claims 7-10, '584 discloses the invention substantively as described in the claims above, however does not specifically state that the identifier is an HTTP session identifier, a URL identifier, or an SSL identifier. '584 does disclose that the

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state table is employed to reroute requests based on a plurality of attributes of the request such as requested service type, requested file, particular client, etc. (col. 3, lines 35-50). This would allow one of ordinary skill in the art to understand that numerous attributes can be utilized in order to route the request, which would lead one to use other fields in the request to be rerouted, such as HTTP session identifier, a URL identifier, or an SSL identifier. As such It would have been obvious to one of ordinary skill in the art to use an HTTP session identifier, a URL identifier, or an SSL identifier as the identifier to route the request in order to allow a system administrator the ability to create rules for rewriting which could take these values into consideration, thereby allowing greater throughput and more efficient processing of requests.

12. Claims 17-20, and 22-25 are rejected for similar reasons as stated above.

Claims 6-10, and 16-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bestavros et al. ("Distributed Packet Rewriting and its Application to Scalable Server Architectures" *Network Protocols*, October, 1998) (hereinafter Bestavros).

13. Referring to claim 6, Bestavros discloses an information processing system, comprising:

a first computing device (i.e. server 4) (Figure 1c) configured to:

receive a request packet originating from a client, the request packet including an identifier (i.e. an inherent feature of any TCP packet) (i.e. arrow noted as "request" of Figure 1c) (page 3, col. 2);

in response to the request packet, identifying a computing device that is associated with the identifier (i.e. consult connection table in order to rewrite each packet, in the example this would be server 2) (Figure 1c; p. 3, col. 2);

when the identified computing device is a second computing device, outputting the request packet to the second computing device for performing the operation in response to the request packet (i.e. arrow noted as "response" of Figure 1c).

Bestavros does not specifically disclose that when the identified computing device is the first computing device, performing an operation of an application in response to the request packet, however one can also notice from Figure 1c that server 4 can act as a server from the rewritten request from server 5. Furthermore it is also said that every host in the web server cluster acts as both a router and a server (p. 1, col. 2, ¶ 3). By this rationale, one of ordinary skill in the art would understand that if a packet was received at server 4 and was destined for server 4, then this packet would not be rewritten, rather it would be interpreted and executed by the web server to generate a response. It would have been obvious to one of ordinary skill in the art to modify the teaching of Bestavros to include this particular situation since this would allow packets which were correctly routed the ability to be serviced without being routed to another server.

14. Referring to claims 7-10. Bestavros discloses the invention substantively as described in claim 6. Bestavros does not specifically state what the identifier is, however does state that the routing decision is based on information that is contained in the packet (p. 3, col. 2, ¶ 1). One of ordinary skill in the art would know that an HTTP session identifier, a URL identifier, and an SSL identifier would all be fields in a request packet and would also realize that the routing could be based upon these values. By this rationale, It would have been obvious to one of ordinary skill in the art to modify the teaching of Bestavros to rewrite the packet based on one of an HTTP session identifier, a URL identifier, and an SSL identifier, since it would allow a detailed method as to how these packets can be distributed or routed to the particular servers (i.e. all secure packets are rewritten to a secure server, a request for a particular web page is routed to a web server storing the page, and all packets of the same session are routed to the same server to provide continuity).

15. Claims 16-28 are rejected for simiiar reasons as stated above. Furthermore it is inherent to the system of Bestavros that the computer readable medium includes computer instructions.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

17. Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571) 272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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JEA

November 4, 2005



JEFFREY P. KIM
ART UNIT EXAMINER